

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Helmut Jerg et al
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Group Art Unit: 1792
Examiner: Benjamin Lee Osterhout
Title: DISHWASHER

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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1 - 9, 11, and 12 are cancelled. Claims 10 and 13 - 23 are pending in the present application. Claims 10 and 13 - 23 have been finally rejected. The final rejections of claims 10 and 13 - 23 are being appealed. Claims 10 and 21 are independent.

(4) STATUS OF AMENDMENTS

In response to the Final Rejection dated August 19, 2009, an Amendment was received in the US Patent Office on November 9, 2009. An Advisory Action mailed November 23, 2009 indicated that the final rejections of claims 10 and 13 - 23 set forth in the Final Rejection dated August 19, 2009 were continued. A Notice of Appeal was received in the US Patent Office on November 23, 2009. No further amendments have been filed.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 10

An exemplary embodiment of the present invention, as recited by, for example, independent claim 10 of the present application, is directed to a dishwasher 1 having a

washing container 2 and at least one device for washing crockery using a rinsing solution (Page 6, lines 31 - 34, and the sole figure of the drawings). The dishwasher 1 also includes, as recited in independent claim 10, a sorption column 10 communicated with the washing container 2 for the passage of air between the sorption column 10 and the washing container 2 (Page 7, lines 1 - 7, and the sole figure of the drawings). As further recited in claim 10 of the present application, the sorption container 10 contains reversibly dehydratable material 11 that operates to withdraw moisture from air during the passage of the air through the sorption column 10 (Page 7, lines 2 - 4, and the sole figure of the drawings), crockery retained in the dishwasher 1 being subjected to a drying step after having undergone a treatment step as a result of which moisture remains on the crockery with the drying step including passing air from the washing container 2 through the sorption column 10 (Page 7, line 26; Page 8, line 14; and the sole figure of the drawings). Also, the sorption column 10 is subjected to thermal energy to effect desorption of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container 2 and heating the crockery (Page 8, line 26; Page 9, line 2; and the sole figure of the drawings).

The inventive dishwasher advantageously offers an efficient and economical operation to clean and dry items while minimizing the associated energy expenditures.

Independent Claim 21

Another exemplary embodiment, as defined by, for example, independent claim 21, is directed to a method for treating crockery disposed in a washing container 2 of a dishwasher 1 (Page 6, lines 31 -34, and the sole figure of the drawings). The method recited in independent claim 21 includes subjecting crockery to at least a washing step, a rinsing step, and a drying step (Page 7, lines 26 - 31, and the sole figure of the drawings), wherein air is passed into contact with the crockery during at least one of the washing, rinsing, and drying steps and such air is thereafter guided to a sorption column 10 communicated with the washing container 2 for the passage of air between the sorption column 10 and the washing container 2 (Page 7, lines 1 - 7, and the sole figure

of the drawings), the sorption container 10 containing reversibly dehydratable material 11 that operates to withdraw moisture from air during the passage of the air through the sorption column 10, crockery retained in the dishwasher 1 being subjected to a drying step after having undergone a treatment step as a result of which moisture remains on the crockery with the drying step including passing air from the washing container 2 through the sorption column 10, and the sorption column 10 being subjected to thermal energy to effect desorption of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery (Page 8, line 26; Page 9, line 2; and the sole figure of the drawings), and the washing container 2 having an outlet with a pipe 6 to the sorption column 10 (Page 7, lines 10 - 11, and the sole figure of the drawings), and the washing container 2 has an inlet 8 with a pipe 7 from the sorption column 10 (Page 7, lines 11 - 13, and the sole figure of the drawings), wherein a fan 9 is located in the pipe 6 to the sorption column 2, which introduces at least some of the air in the washing container or from the ambient air to the sorption column at least temporarily (Page 7, lines 13 - 15, and the sole figure of the drawings).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 10 and 13 - 21 are anticipated under 35 U.S.C. §102(b) by European Patent Application No. 358279 A1 to Fried et al?
- B. Whether claims 22 and 23 are anticipated under 35 U.S.C. §102(b) by European Patent Application No. 358279 A1 to Fried et al?
- C. Whether claim 16 is unpatentable under 35 U.S.C. §103(a) over European Patent Application No. 358279 A1 to Fried et al in view of US Patent No. 5,343,632 to Dinh?

(7) ARGUMENT

A) The Rejection of Claims 10 and 13 - 21 Under 35 U.S.C. §102(b) as Being Anticipated by European Patent Application No. 358279 A1 to Fried et al is Not a Proper Rejection

In the Final Office Action dated 08/19/2009, claims 10, 13 - 21, and 23 were rejected under 35 USC §102(b) as being anticipated by European Patent Application No. 358279 A1 to Fried et al. The Examiner asserts, with respect to the rejection of claim 10, that European Patent Application No. 358279 A1 to Fried et al discloses

...a dishwasher with a rinsing container (Fig 1, part 1); a spraying system using rinsing water (not shown in the Figures; machine translation, page 2, II. 5-6, "A rinsing container..."); and a double walled drying container connected outside of the rinsing container, the container filled with a desiccant that is reversibly dehydratable (machine translation, page 2, II. 6-8, "Around the instantaneous..."; machine translation, page 1, II. 5, "regeneratable by heating..."), air is circulated through the dishwasher wherein the dry air takes up moisture and is dried again by the drying container (machine translation, page 2, II. 15-18, "In the drying container...") which the drying step is indicated to occur after some rinsing step (machine translation, page 1, II. 8-9, "Afterwards the hot rinsing..."), and the heating element which dries the desiccant is also used to heat the rinsing water (machine translation, page 2, II. 6-8, "Around the instantaneous..."; machine translation, page 2, II. 21-23, "With the next start-up...); see also Fig. 2, parts 7 and 3, drying container and instantaneous water heater respectively).

According to the machine translation provided by the Examiner, European Patent Application No. 358279 A1 to Fried et al discloses "[a] rinsing container 1 is bottom 2 provided with a sump, pressed of which from the rinsing water becomes over the instantaneous water heater 3 of a pump 4 in the not drawn distributor and spraying system of the Spülers. Around the instantaneous water heat 3, existing from the flow pipe 5 and the tubing heating element 6, is a double walled hollow cylinder 7 as drying container placed, which is filled with a desiccant. Over the terminal 8 the drying container 7 with a blow-out port flowing in the container 1 is 9 connected, which is provided with a cap-like cover 10. Over the terminal 11 the drying container is 7 12 connected with the air circulation, into which a fan 13 is eingeschleift. The opening 14 of the air circulation 12 ends cover-laterally in the rinsing container 1" (sic) (Machine translation of European Patent Application No. 358279 A1 to Fried et al, Page 2, lines 5 - 11).

Appellants submit, however, that European Patent Application No. 358279 A1 to Fried et al does not teach or disclose all of the features of the dishwasher recited in claim 10 of the present application. The Examiner asserts that the heating element of the European Patent Application No. 358279 A1 to Fried et al dishwasher which dries the desiccant is also used to heat the rinsing water and, thus, is a teaching of the feature recited in claim 10 of the present application that the sorption column is subjected to thermal energy to effect desorption of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery. However, it is submitted that the passages of European Patent Application No. 358279 A1 to Fried et al pointed out by the Examiner do not support an assertion that European Patent Application No. 358279 A1 to Fried et al teaches or discloses this feature recited in claim 10 of the present application. Moreover, as will be seen, other passages of European Patent Application No. 358279 A1 to Fried et al appear to support instead the opposite conclusion that European Patent Application No. 358279 A1 to Fried et al does not teach or disclose this feature.

Claim 10 of the present application recites the feature of the inventive dishwasher that the sorption column is subjected to thermal energy to effect desorption

of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery. With reference to the sole figure of the drawings of the present application, the present application discloses an embodiment wherein the reversibly dehydratable material 11 is located within the sorption column 10 and the sorption column 10 is communicated through the pipes 6, 8 with the washing container 2. Thus, after the reversibly dehydratable material 11 has extracted moisture from the air that has flowed over it, the reversibly dehydratable material 11 is itself desorbed by the application of an amount of energy to the reversibly dehydratable material 11. Furthermore, the energy used for such desorption is usable for heating the rinsing solution and/or the crockery. See, for example, Page 9, lines 14 - 21 of the present application: "Thus, further heating can largely be dispensed with and, apart from the small amount of energy required to overcome the binding forces between water and reversibly dehydratable material, the thermal energy used for desorption can be also completely used for heating the treatment liquid, the rinsing solution and/or the crockery. In addition to the saving of energy, efficient cleaning of the items to be cleaned and treated is furthermore ensured."

To the extent understood, the European Patent Application No. 358279 A1 to Fried et al arrangement does not appear to teach or disclose such a feature. Referring now to Figures 1 and 2 of European Patent Application No. 358279 A1 to Fried et al, it can be seen that the desiccant cylinder 7 is in surrounding relationship around a tubular heating element 6. As noted in the machine translation of European Patent Application No. 358279 A1 to Fried et al, page 2, II. 21-23, "With the next start-up of the dishwasher already the desiccant in the drying container becomes again heated and moisture over the air circulation into the rinsing container returned in the rinsing process, thus with the heating of the cleaning fleet." It is believed that this passage of European Patent Application No. 358279 A1 to Fried et al discloses that, during the next-occurring operation of the dishwasher and, in fact, when the washing of the crockery is still underway - that is, at a time when the cleaning solution is being heated - the desiccant in the desiccant retainer [the desiccant cylinder 7] is again heated and, thus, the moisture is returned via the air conduit to the rinsing container 1.

This passage is not seen to be a teaching that, in the language of claim 10 of the present application, the sorption column is subjected to thermal energy to effect desorption of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery. Instead, it appears that the European Patent Application No. 358279 A1 to Fried et al arrangement uses the tubular heating element 6 to heat the desiccant cylinder 7, thereby effecting a release of moisture that is retained by the desiccant cylinder 7. European Patent Application No. 358279 A1 to Fried et al does not appear to disclose, teach, or suggest that such energy used for desorption be "at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery," in the language of claim 10 of the present application. In fact, it appears that the desiccant cylinder 7 of European Patent Application No. 358279 A1 to Fried et al would, upon being so heated, release heat to its surrounding environment and this surrounding environment is in a portion of the dishwasher 1 external to its rinsing container 2. Accordingly, European Patent Application No. 358279 A1 to Fried et al appears to make no suggestion, let alone provide any disclosure of a particular structure, for using such heat to heat a rinsing solution or heat the crockery.

The Examiner has failed to consider that the feature recited in claim 10 of the present application that the sorption column is subjected to thermal energy to effect desorption of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery is, in fact, a limitation of claim 10. Instead, the Examiner asserts:

...Applicant has created a new argument debating the source of the air wherein said air is passed through the sorption column. Examiner's primary source of concern with this argument is that Applicant is claiming a dishwasher, not a source of air or the air itself which is passed through the sorption column. Applicant should specifically claim the structure that allows communication from the dishwasher to the sorption column. Furthermore, Fried et al. clearly shows

a communication path between the sorption device and the washing container (Fig. 1, parts 3 and 12).

Contrary to the Examiner's assertion noted just above, Appellants have claimed in claim 10 of the present application "a structure that allows communication from the dishwasher to the sorption column" - namely, claim 10 recites "a sorption column communicated with the washing container for the passage of air between the sorption column and the washing container." Additionally, with regard to the Examiner's concern that "Applicant is claiming a dishwasher, not a source of air or the air itself which is passed through the sorption column," Appellants point out that claim 10 of the present invention is directed to a dishwasher having, as one of its features, a sorption column that "is subjected to thermal energy to effect desorption of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery."

In view of the fact that European Patent Application No. 358279 A1 to Fried et al fails to teach or disclose all of the elements of claim 10 of the present application, claim 10 is clearly not anticipated under 35 U.S.C. §102(b) by European Patent Application No. 358279 A1 to Fried et al and the rejection of claim 10 should be withdrawn. Also, claims 13 - 21 are not anticipated under 35 U.S.C. §102(b) by European Patent Application No. 358279 A1 to Fried et al for at least the same reasons and because they recite additional patentable subject matter.

B. The Rejection of Claims 22 and 23 Under 35 U.S.C. §102(b) as Being Anticipated by European Patent Application No. 358279 A1 to Fried et al is Not a Proper Rejection

In the Final Office Action dated 08/19/2009, claim 22 is rejected under 35 USC §102(b) as being anticipated by European Patent Application No. 358279 A1 to Fried et al. Claim 22 of the present application depends from independent method claim 21 and recites that the drying step of the method for treating crockery disposed in a washing container "includes passing air from a washing container having an outlet with a pipe and the pipe includes a check valve." Thus, the drying step of the method for treating

crockery disposed in a washing container according to claim 22 results in air being passed from the washing container along an outlet with a pipe and this pipe includes a check valve.

The Examiner asserts that European Patent Application No. 358279 A1 to Fried et al discloses a method for treating crockery with all of the steps of the method for treating crockery recited in claim 22 of the present application. In particular, the Examiner asserts that European Patent Application No. 358279 A1 to Fried et al "teaches that the rinsing container has a inlet pipe (blow-out port, Fig. 1, part 9) which reintroduces air from the rinsing container that has passed through the drying container and desiccant back into the rinsing container (machine translation, page 2, II. 15-18 of European Patent Application No. 358279 A1 to Fried et al, 'In the drying container...') comprising a pipe (Fig. 1, part 9) that has an outlet (inherent, see Fig. 1, part 9) with a one way valve (cap-like closure, Fig. 1, part 10, see machine translation, claims 11 and 12)."

The Examiner thus proposes that European Patent Application No. 358279 A1 to Fried et al shows a part 9 equivalent to the "pipe" recited in claim 22 of the present application and a part 10 equivalent to the "check valve" recited in claim 22 of the present application. However, it appears that the Examiner has incorrectly read into claim 22 of the present application a limitation that the "pipe" has an "outlet" and, based upon this mistaken reading of claim 22 of the present application, the Examiner has alleged that European Patent Application No. 358279 A1 to Fried et al "teaches that the rinsing container has a inlet pipe (blow-out port, Fig. 1, part 9) ... that has an outlet (inherent, see Fig. 1, part 9)..." In fact, claim 22 of the present application does not recite a limitation that the "pipe" has an "outlet" but instead recites that the drying step of the method for treating crockery disposed in a washing container "includes passing air from a washing container having an outlet with a pipe and the pipe includes a check valve." The relevant inquiry is therefore whether European Patent Application No. 358279 A1 to Fried et al teaches or discloses a step of passing air from a washing container having an outlet with a pipe and the pipe includes a check valve (not whether a "pipe" such as part 9 of European Patent Application No. 358279 A1 to Fried et al has an "outlet").

The answer is that European Patent Application No. 358279 A1 to Fried et al fails to teach or disclose, in the language of claim 22 of the present application, "a washing container having an outlet with a pipe and the pipe includes a check valve." European Patent Application No. 358279 A1 to Fried et al discloses a washing container 1 and an air guiding conduit 12 that is an outlet from the washing container 1 (the air guiding conduit 12 is communicated via an opening 14 with the interior of the washing container 1). But this conduit 12 of European Patent Application No. 358279 A1 to Fried et al does not include a check valve. Turning instead to part 9 of European Patent Application No. 358279 A1 to Fried et al, as the Examiner has, this part 9 is not an "outlet" with respect to the washing container 1 but is, to the contrary, an "inlet" with respect to the washing container 1. The Examiner has failed to point to any teaching or disclosure in European Patent Application No. 358279 A1 to Fried et al of a step of a step of passing air from a washing container having an outlet with a pipe and the pipe includes a check valve, as recited in claim 22 of the present application. It is accordingly submitted that the rejection of claim 22 under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 358279 A1 to Fried et al is not a proper rejection and should be withdrawn.

The Examiner also asserts that European Patent Application No. 358279 A1 to Fried et al "teaches that the rinsing container has a inlet pipe (blow-out port, Fig. 1, part 9) which reintroduces air from the rinsing container that has passed through the drying container and desiccant back into the rinsing container (machine translation, page 2, II. 15-18, 'In the drying container...') comprising an inlet valve (Fig. 1, part 14, machine translation, claim 10)." Claim 23 of the present application depends from independent method claim 21 and recites that passing air from the washing container through the sorption column in the method for treating crockery disposed in a washing container includes passing air from a washing container having, in the direction of flow, an inlet valve to the ambient air. The Examiner appears to assert that the part 9 shown in European Patent Application No. 358279 A1 to Fried et al is a disclosure of the "inlet pipe" recited in claim 23 of the present application and the part 14 shown in European Patent Application No. 358279 A1 to Fried et al is a disclosure of the "inlet valve" recited in claim 23. However, the part 9 shown in European Patent Application No. 358279 A1

to Fried et al is not a pipe along which air is passed from the washing container but is instead, a pipe along which air is passed into the washing container. For this same reason, the part 14 shown in European Patent Application No. 358279 A1 to Fried et al is not an "inlet valve" within a pipe along which air is passed from the washing container, as recited in claim 23 of the present application. In fact, as discussed hereinabove, European Patent Application No. 358279 A1 to Fried et al does not appear to hint at, let alone disclose, the use of ambient air. It is accordingly submitted that European Patent Application No. 358279 A1 to Fried et al thus does not disclose all of the features of the method recited in claim 23 of the present application.

It is accordingly submitted that European Patent Application No. 358279 A1 to Fried et al thus does not disclose all of the features of the dishwasher recited in claims 22 and 23 of the present application. In view of the fact that European Patent Application No. 358279 A1 to Fried et al fails to disclose all of the elements of claims 22 and 23 of the present application, these claims are clearly not anticipated under 35 U.S.C. §102(b) by European Patent Application No. 358279 A1 to Fried et al and the rejection of these claims should be withdrawn.

C. The Rejection of Claim 16 Under 35 U.S.C. §103(a) as Being Unpatentable Over European Patent Application No. 358279 A1 to Fried et al in View of US Patent No. 5,343,632 to Dinh is Not a Proper Rejection

Claim 16 of the present application recites the feature that the dishwasher set forth in claim 10 includes the feature that the air introduced into the washing container via the inlet is cooled. The Examiner asserts that European Patent Application No. 358279 A1 to Fried et al teaches the features of the dishwasher recited in claim 10 but may not teach that the air introduced into the washing container via the inlet is cooled. Nonetheless, the Examiner asserts that US Patent No. 5,343,632 to Dinh discloses a cooler/condenser used to cool humid air in order to further remove moisture from the air before the air is recirculated. However, Appellants submit that, even conceding that US Patent No. 5,343,632 to Dinh discloses such a feature, it can readily be seen that US

Patent No. 5,343,632 to Dinh fails to overcome the deficiencies of European Patent Application No. 358279 A1 to Fried et al as discussed above.

For these and other reasons, it is submitted that claim 16 of the present application is not properly rejectable as unpatentable under 35 U.S.C. §103(a) over European Patent Application No. 358279 A1 to Fried et al in view of US Patent No. 5,343,632 to Dinh and Appellants respectfully request withdrawal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

1 - 9. (Canceled)

10. (Rejected) A dishwasher comprising:
a washing container;
at least one device for washing crockery using a rinsing solution; and
a sorption column communicated with the washing container for the passage of
air between the sorption column and the washing container, the sorption container
containing reversibly dehydratable material that operates to withdraw moisture from air
during the passage of the air through the sorption column, crockery retained in the
dishwasher being subjected to a drying step after having undergone a treatment step as
a result of which moisture remains on the crockery with the drying step including
passing air from the washing container through the sorption column, and the sorption
column being subjected to thermal energy to effect desorption of the sorption column
with the thermal energy being at least partly used for at least one of heating the rinsing
solution in the washing container and heating the crockery.

11. (Canceled)

12. (Canceled)

13. (Rejected) The dishwasher according to claim 10, wherein the sorption
column comprises a container for the reversibly dehydratable material which makes it
possible to exchange moisture and/or heat between the reversible dehydratable
material and the air surrounding it.

14. (Rejected) The dishwasher according to claim 10, wherein a preferably electric heating element is provided for desorption of the reversibly dehydratable material.
15. (Rejected) The dishwasher according to claim 14, wherein the heating element is arranged in the reversibly dehydratable material or in the pipe to the sorption column.
16. (Rejected) The dishwasher according to claim 10, wherein the air introduced into the washing container via the inlet is cooled.
17. (Rejected) The dishwasher according to claim 10, wherein a droplet separator is arranged at the inlet or the pipe is guided upwards over a partial area at the inlet so that no spray water reaches the sorption column via the pipe.
18. (Rejected) The dishwasher according to claim 10, wherein the thermal energy used for desorption is stored in a heat storage device before use for heating the rinsing solution and/or the crockery.
19. (Rejected) The dishwasher according to claim 10, wherein, during a partial program step using rinsing liquid to be heated, air from the washing container and/or from the ambient air is passed through the sorption column and into the washing container.
20. (Rejected) The dishwasher according to claim 10, wherein, during a partial program step "drying", air from the washing container and/or from the ambient air is passed through the sorption column and into the washing container.
21. (Rejected) A method for treating crockery disposed in a washing container, comprising:

subjecting crockery to at least a washing step, a rinsing step, and a drying step, wherein air is passed into contact with the crockery during at least one of the washing, rinsing, and drying steps and such air is thereafter guided to a sorption column communicated with the washing container for the passage of air between the sorption column and the washing container, the sorption container containing reversibly dehydratable material that operates to withdraw moisture from air during the passage of the air through the sorption column, crockery retained in the dishwasher being subjected to a drying step after having undergone a treatment step as a result of which moisture remains on the crockery with the drying step including passing air from the washing container through the sorption column, and the sorption column being subjected to thermal energy to effect desorption of the sorption column with the thermal energy being at least partly used for at least one of heating the rinsing solution in the washing container and heating the crockery, and the washing container having an outlet with a pipe to the sorption column, and the washing container has an inlet with a pipe from the sorption column, wherein a fan is located in the pipe to the sorption column, which introduces at least some of the air in the washing container or from the ambient air to the sorption column at least temporarily.

22. (Rejected) The method for treating crockery according to claim 21 disposed in a washing container, wherein the drying step including passing air from the washing container through the sorption column includes passing air from a washing container having an outlet with a pipe and the pipe includes a check valve.

23. (Rejected) The method for treating crockery according to claim 21 disposed in a washing container, wherein the drying step including passing air from the washing container through the sorption column includes passing air from a washing container having, in the direction of flow, an inlet valve to the ambient air.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None